

MINUTES
WARRICK COUNTY AREA PLAN COMMISSION
Regular meeting held in Commissioners Meeting Room,
Third Floor, Historic Court House,
Boonville, IN
Monday, November 8, 2010, 6:00 PM

MEMBERS PRESENT: Guy Gentry, President; Tony Curtis, Vice President; Phil Baxter, Larry Willis, Mike Moesner, and Art Noffsinger.

Also present were Morrie Doll, Attorney; Sherri Rector, Executive Director; and Christy Powell, staff.

MEMBERS ABSENT: Brad Overton

MINUTES: Upon a motion made by Mike Moesner and seconded by Larry Willis, the Minutes of the last regular meeting held, October 11, 2010, were approved as circulated.

The President explained the Rules of Procedure to the audience.

There was some discussion about the Commissioner's changing their meeting dates to Dec 6 and Dec. 20th at this evening's Commissioner's meeting.

SUBDIVISIONS FOR PRIMARY PLAT APPROVAL:

PP-10-07 Pebble Creek Subdivision – by R&S, LLC by Dr. Mohammad Hussain, Partner. Owner: Fredrick F. Martin Trust of 2004 by Fredrick F. Martin, Trustee located on the S side of Vann Rd. (S 350) approximately 0' W of the intersection of Vann Rd. and Bell Rd. (W 850). Ohio Twp. (Complete legal on file.) *Advertised in the Boonville Standard September 2, 2010; Continued from the September 13th and October 11th meeting.*

Bill Bivins, Engineer; Mohammad Hussain, Partner; and Fred Martin, Owner approached the podium.

The President asked for a staff report.

Mrs. Rector stated they do have all the return receipts of certified mail to the adjacent property owners. She stated this subdivision has been continued due to getting Drainage Board approval which they received today. She stated there is some Zone A flood plain along the South side of the property and the Base Flood Elevation will have to be determined and shown on the plat before a secondary plat is recorded. She stated that would be a condition of approval. She stated as it is proposed it is a 49 lot subdivision. She stated they have a letter from Chandler that they have both water and sewer capacity to service the development. She stated on the Use and Development commitment that was approved last month on the rezoning, it stated lots 1-32 will be single family dwellings, lots 33-41 will be single family dwellings or duplexes, and lots 42-49 will be apartments. She continued it also states a berm with some type of trees for a buffer will be constructed along the north side of Lots 47 and 48 and along the east side of lots 48 and 49. She stated that will need to be shown on the final plat. She stated

there is a letter from Evansville Metropolitan Planning Organization making a recommendation that Montgomery (Court) Lane connect to Pebble Creek Drive and all lots should access internal streets. She stated there is also a letter from County Engineer, Bobby Howard, stating he is in favor of the proposed stub out to the south because it will allow for greater connectivity and more access points for local traffic as opposed to forcing additional traffic onto Bell Road when future development occurs to the south. She stated however, in the Commissioner's meeting, the Commissioners approved the street construction plans and the Drainage plans, but their recommendation to this Board, since this Board approves the location and layout of the streets, they recommend that it not be stubbed out to the property to the south. He stated it is up to the Board whether they require the stub out.

The President asked if they gave any reasons for that recommendation.

Mrs. Rector stated they just didn't feel that it was needed to have residential traffic to be going down through commercial property.

Commissioner Noffsinger stated that neither developer wanted that as they are developing their own properties. He stated there will be a lot of traffic going through this residential area. He stated there should be some restrictions. He stated they complied with everything; both developments have two means of egress going in and out of the property. He stated these were merely suggestions and the Commissioner's didn't feel that they should add additional obligations when they've complied with everything else.

Mrs. Rector stated the plat is in technical conformity to the subdivision control ordinance and as stated it would have to be conditioned upon DNR flood plain determination before the final plat is recorded.

The President asked if the Petitioner's had anything to add to the staff report.

Mr. Bivins stated they realigned Montgomery Ct. which is now Montgomery Ln. to satisfy the County Engineer and the Transportation Board and they are open to leaving it as is or doing away with the stub out.

The President asked if there were any questions by Board Members.

Mr. Willis stated he has mixed emotions both ways. He stated he can understand if this was all commercial development down there and there was going to be commercial traffic going from one developing area to another developing area, rather than going back on Bell Rd. and then coming back in where there would be a stub out. He stated but he can also, by living on a cul-de-sac, he lives there for a reason because he doesn't want a lot of drive through traffic in his neighborhood for all the kids that play. He stated being this is a residential neighborhood more than it is an apartment neighborhood he can see where the stub out would be a hindrance if they are going to have traffic flow there and have a neighborhood full of children playing in these single family dwellings.

Commissioner Noffsinger stated he thought that was one of the Commissioner's main reasons as well.

The President asked for any further comments by the Board.

Mr. Moesner stated he agrees with Mr. Willis that it is better off because it is residential particularly in this area that they are talking about that it doesn't go all the way through.

The President asked what the zoning was south of the Primary.

Mrs. Rector stated C-4, general commercial. She stated there is a road stubbed out from Walmart to the property to the south of this. She stated she doesn't know if they are planning on connecting to that in their development. She stated this would stop the commercial traffic from going through the residential area any further up.

Mr. Gentry asked if Jim Biggerstaff, surveyor, had anything to add.

Mr. Biggerstaff approached the podium. He asked if Mrs. Rector had the letters he submitted.

Mrs. Rector stated yes.

Mr. Biggerstaff stated Bill Byers and he recently acquired this under Bell Development Corporation and they have done a lot of senior citizen projects and retirement villages and they have submitted this under a 538 project right now and they have a preliminary layout based on the northern section of it. He continued that Landmark does the construction management on these projects and they also do all the submittals to RDA. He stated at that time this stub out of this roadway actually goes right in the middle of this retirement community which splits what they've submitted for RDA approval. He stated in the terms of the ordinance itself, the ordinance is quite clear on the requirements there. He stated basically what it says, Article IV Section 2 Streets (4): Residential streets shall be designed to discourage rapid through traffic. Straight tangents of more than 1350 feet are prohibited. He stated the ordinance prohibits it. He stated as far as the Comprehensive Plan, Vann Rd and Bell Rd. are listed as a major collector rural so to him those are the roads that carry the traffic, which is why they are giving the 40' of right of ways and the 80' of right of ways. He stated there are other things; it makes a substandard lot on the parcel to the south. He stated now they've got a piece of ground they can't use where it is stubbed out so there is no direct alignment. He stated both subdivisions meet the ordinance, he's got two entrances, they've got two entrances. He stated Bellmoore was a part of the overall project which they are acquiring subject to all these approvals. He stated they have an entrance and an exit on Bell Rd. He stated they are trying to isolate those areas by doing a residential retirement community next to their development so they don't want the traffic going through there.

Mrs. Rector asked Mr. Biggerstaff if they are going to connect to the Walmart stub out.

Mr. Biggerstaff stated yes, there was a relay out on that but basically there was a preliminary layout where they come into Bell Rd. and make a loop and tie in to the Walmart stub out. He stated if the Board looks at High Point's layout it was a primary that was the same way. He stated the retirement is in the back and as they move forward it gets to commercial. He stated that is what people want. They want to live close to commercial but they don't want the commercial traffic going through them either and that is their whole reasoning for this. He stated stubbing out that road will also be an additional cost to them also.

Mr. Gentry asked Mr. Bivins if that is eliminated if he will readjust the primary plat.

Mr. Bivins stated they will not increase the number of lots at the bottom, they will just re-shape them.

Mr. Willis asked if he was talking about lots 33-38.

Mr. Bivins stated the ones down at the bottom.

Mr. Gentry asked if he would like to ask the Board to amend the Primary.

Mr. Bivins stated he would like to get it approved subject to the changes by review of the Planning Commission staff after they shape them up so they won't have to come back to another meeting. He stated this is about the 5th meeting they've been to.

Attorney Doll stated it would be a conditional approval.

Commissioner Noffsinger made a motion to approve PP-10-07 eliminating the stub out for the road contingent on the Engineer coming back with the design showing the widening of the lots without adding any additional lots. The approval will also be conditioned upon the flood plain being determined on the final plat and a berm with some type of trees for a buffer will be constructed along the north side of Lots 47 and 48 and along the east side of lots 48 and 49.

The President stated before there is any more discussion or any kind of second on the motion, he hasn't asked for Remonstrators. He asked if there were any remonstrators for or against this project. There being none he called for any further discussion.

Mr. Willis asked if the plat will be reviewed by the Executive Director.

Mrs. Rector stated yes and that Mr. Bivins understands that he is going to amend his certificate of compliance for the street construction plans and the Commissioners gave Robert Howard, County Engineer authority to approve that so they don't have to come back to that meeting.

Mr. Gentry seconded the motion and the motion carried.

PP-10-08 The Replat of Lots Six (6) & Seven (7) and Out Lot A of Bell Oaks Centre Subdivision

as recorded in Doc No. 2007R-011190 – by SM Properties, L.P. (a Missouri Limited Partnership) by Mark J Schnuck, President. Located on the E side of Bell Rd (W 850) approximately 300 feet S of the intersection formed by Bell Rd. (W 850) and SR 66. Ohio Twp. Lot 6, 7 and Out lot A in Bell Oaks Centre Subdivision. *Advertised in the Boonville Standard October 28, 2010.*

James Farney approached the podium and stated he is with Bernardin Lochmueller Associates.

Marco DeLucio approached the podium and stated is with Ziemer, Stamen, Weitzel & Shoulders and he is present for SM Properties the Petitioner.

The President called for a staff report.

Mrs. Rector stated they have all the return receipts from certified mail to the adjacent property owners except Ohio Twp Public Library but they do have the white pay receipt and delivery confirmation. She stated 2 envelopes were returned for First Federal Savings Bank and POB Development and they were mailed to the correct addresses. She stated this is "C-4" General Commercial zoning and there is no flood plain. She stated it is a proposed 3 lot subdivision with an out lot. She stated the property has a private road which is Schnucks Ln. She stated the Commissioners approved that no improvements be required to Bell Rd. She stated this meets the new ordinance that was just approved tonight in the Commissioner's Meeting where they have the commercial frontage lot and it is shown on the plat. She stated they have letters from Chandler Water and Newburgh Sewer stating the lines are in place and currently servicing the development. She stated it is for commercial use consistent with the allowed zoning designation of C-4. She stated the plat is in technical conformity. She stated the developers are discussing moving the west line of Lot 6A and 6B 10-20' east from what is shown on the current plat. She told them to inform the Board about that and to ask permission to allow approval by the Executive Director of this small change if they decide to change it on the secondary plat and they wouldn't have to come back before the Board. She stated it would still meet all regulations. She stated she thinks they are trying to decide whether they want the property line further away from the retention area.

Mr. Farney stated it would be the west line of Lot 6A and Lot 6B so it would be the common line between those lots and the retention basin.

Mr. Willis asked if they would move it east.

Mr. Farney stated yes, they would move it somewhere between 0 and 20' to the east.

Mr. Gentry asked if they would shift the whole lot or shrink it.

Mr. Farney stated they would shrink the lot size.

Mr. Gentry asked if there were questions by Board Members.

Mr. Gentry asked if this will be a new road between the road that is coming out of Schnucks and that crazy Bell Oaks Centre.

Mrs. Rector stated no it is existing they are just naming it now.

Mr. Gentry stated he wishes they could go back and make that a right in right out. He asked for any other questions from Board Members. There being none he asked for remonstrators for or against the project. There being none he entertained a motion.

Commissioner Noffsinger made a motion to approve PP-10-08 with the condition if they want to move the lot lines of 6A and 6B 0-20' the Executive Director can approve that change.

Tony Curtis seconded and the motion carried.

PP-10-09 Cottages at Victoria, PUD Section 1 Subdivision – by Victoria Land Holdings, LLC by Mike McCann, Member. Located on the N side of Roslin Rd. approximately 1700 feet W of the intersection formed by Roslin Rd. and Wethers Rd. (W 450) Boon Twp. Part of Lot 1 in the Victoria

National Golf Club Minor Subdivision. *(Complete legal on file.) Advertised in the Boonville Standard October 28, 2010.*

Jordan Aigner approached the podium.

Mrs. Rector suggested the Board hear both the Primary Plat and Rezoning Petition together since they go together.

REZONING PETITIONS:

PC-R-10-07 – Petition of Victoria Land Holdings, LLC by Mike McCann, Member. To rezone 62.404 acres located on the N side of Roslin Rd. approximately 1700 feet West of the intersection formed by Roslin Rd. and Wethers Rd. (W 450) being Lot 1 in the Victoria National Golf Club Minor Subdivision, Boon Twp. from “A”, Agriculture and “CON”, Recreation and Conservancy zoning districts to PUD (Planned Unit Development) consisting of “C-2” Community Commercial zoning district with a Primary Plat and a Use and Development Commitment. *(Complete legal on file.) Advertised in the Boonville Standard October 28, 2010.*

The President called for a staff report.

Mrs. Rector stated for both the rezoning and primary plat applications they have all the return receipts from certified mail to the adjacent property owners except one (John Guidry). She stated they do have the white pay receipt for him postmarked Oct 18, 2010. She stated it is Lot 1 of Victoria National Golf Club Minor Subdivision located on the north side of Roslin Rd. 1700’ W of Roslin Rd. and Wethers Rd. She stated this is a petition to rezone 62.404 acres from “A” Agriculture and “CON” Recreation and Conservancy to PUD (Planned Unit Development) consisting of “C-2” Community Commercial zoning district with a Primary Plat and a Use and Development Commitment. She stated the Comprehensive Plan has no projection for this area. She stated the existing land use is residential / golf course. She stated the property to the south is zoned Agriculture and is Friedman Park and to the north, east and west is zoned Agriculture and Con and is Victoria National Golf Course and residences. She stated the Use and Development Commitment states the use of the real estate shall be limited to the following uses: “The sale of single family residences, fractional sales on condominium buildings, multi family sales, and private use of a resort, lodging, or conference center.” She stated the use of the real estate shall be limited to the development requirements per approved PUD. She stated there is some Zone A Flood Plain but it is in the out lot area not in the proposed building area. She stated the property does access Roslin Rd. and the proposed development is a PUD for cottages and what was listed in the use and development commitment. She stated they are asking to waive the rules of procedure and go to the next Commissioner’s Meeting which would be November 22, 2010. She stated as far as the primary plat, it is a proposed 9 lot subdivision for cottages and an out lot for future development. She stated Hines Ditch, a legal drain, also run through a portion of the out lot. She stated Mr. Aigner is aware before any development can occur in the out lot there will have to be another plat submitted and it will have to be sent to DNR for floodway and flood plain determination before any approval can be obtained on anything that is over 5 acres. She stated the Drainage Board approved that no drainage plans were required. She stated the Commissioners approved that no

improvements are necessary to Roslin Rd. and the existing entrance. She stated the property fronts on Roslin Rd. and Bobby Howard, County Engineer, is not requiring any improvement to the entrance at this time. She stated however, there is a private street (Roslin Ln.) planned through the development and a letter has been submitted by Steve Byers, Fire Chief, detailing some concerns he has. She stated they have a copy of that in their packets. She stated she spoke to Mr. Aigner before the meeting and he is aware that she is bringing this up. She stated the Fire Chief wants the property owners to check the weight limit of the bridge that is over the legal drain that will go back to the cottages to make sure the bridge will support the fire trucks. She stated due to the width of the road, they need to make it a condition that there can be no parking on the roadway. She stated he wants a sufficient turnaround area for the fire truck near or close to the end of the building area and then fire hydrants and adequate water flow. She stated Steve Byers has discussed the fire hydrants with Mr. Aigner and has assured her that he is going to install sufficient hydrants so she will get with him to discuss the location. She stated Mr. Byers also wants a condition on the plat that signs are placed out by the maintenance building marking the entrance to the drive. She stated Mr. Byers told her that he wanted her to report to the Board that he wants the turn-around in and the weight limit established on the bridge before any building can start. She stated the Board could approve the Primary with that condition. She stated the Fire Chief wants to go back out there and inspect the road and make sure that everything is okay before any building starts so they can get in and out. She stated right now he is saying an ambulance couldn't even get in and out. She stated she told Mr. Aigner that she would report this to the Board and she would have no problem, when she gets the letter from Mr. Byers, forwarding it to this Board and making sure that the Board is in agreement for her to go ahead and record the secondary plat instead of them having to come back to another meeting. She stated she told Mr. Aigner they need to show the frontage of the cottages coming down to Roslin Ln on the plat. She stated the lots need to have frontage on that road or some type of easement along there.

Mr. Aigner stated they could add easements for each one down to that existing road.

Mrs. Rector stated they are going to sell them so there needs to be something shown that each cottage has their own access whether by easement to the existing road or not. She stated there are a few things that need to be cleaned up on the plat and Mr. Aigner is aware of that. She stated other than that it is in technical conformity with the Subdivision Control Ordinance.

Mr. Gentry asked the petitioners if they had anything to add to the staff report.

Mr. Aigner stated he would be happy to answer any questions the Board might have.

The President asked Mr. Aigner if he had a problem with what the Fire Chief is requesting.

Mr. Aigner stated no, he actually called Mr. Byers just for this reason because it was important to him to make sure that road is safe. He stated the only real issue here is that it is a little convoluted how to get back there because it is hidden from public eye. He stated that is why he decided to call it Roslin Ln. because they've had problems with EMS and fire trucks maybe not knowing where things are. He stated he thought if he called it something "Victoria", emergency services might go to the front

entrance so he thought it would make more sense to name it Roslin Ln. He stated Mr. Byers went out there and looked at it and they had a discussion about all these things and agreed these were things they need to get done beforehand. He stated like Mrs. Rector stated, if all these things are done before the secondary plat can be filed, they can't get a building permit until that secondary plat is recorded anyway so they have to do it.

Mr. Gentry asked what type of bridge structure it is.

Mr. Aigner stated they have had loaded concrete trucks cross it but they've never done a structural certification over it so he knows it will probably hold a large fire truck but as far as an actual certification, they have not done that. He stated the abutments are concrete. He asked Phil Baxter how long ago that was done.

Mr. Baxter stated it was probably done six or seven years ago.

Mr. Aigner stated he thought the County and the owners worked on it together.

Mr. Baxter stated he thought so yes.

Mr. Aigner stated so it was done a while back, the County knew about it because it is a legal drain obviously, but they have never gone back to see how much it can hold. He stated they will verify all those things with Mr. Byers. He stated obviously it is important to them because of fire hazards and emergencies. He stated to give the Board the gist of it basically, the access as far as this Board and the rest of the Boards are concerned is from Roslin Rd. but it is going to be more of a resort type feel, cottages that people may be coming out of town, check in at the clubhouse and then take them like a concierge, by a golf cart to their cottage. He stated as far as any real traffic it will be much lower traffic than any development that they are typically used to. He stated that is going to be the primary use.

Mr. Gentry asked what type of gate that is shown, if it is locked or not.

Mr. Aigner stated they may have a locked gate but it has never been locked that he knows of and if they need to put a stipulation somewhere or take the gate down they will be fine with that.

Mrs. Rector stated she wanted to bring that up to the attorney. She stated she had prepared a Hold Harmless Agreement and emailed it to Attorney Doll similar to what Mr. McGillam had to go through with the gated community. She stated they probably need to tweak it a little.

Attorney Doll asked if she was going to add the fire department.

Mrs. Rector stated they've got the fire department on there but she thinks one of the reasons she thinks they need it County wise is what if someone does park a car there and the fire truck can't get to them, then they are not going to sue the County for approving this because it is a private road, they will have no way to police it, they don't maintain it, no one will be checking it. She explained to Mr. Aigner, it was a Hold Harmless signed by the owners and recorded and cross referenced to the plat and the

private restrictions. She stated any individual buying a lot would be aware of it. She stated that would be signed and recorded with the secondary plat.

Attorney Doll agreed that is needed.

Mr. Gentry asked if there were any remonstrators for or against the project. Being none he entertained a motion.

Guy Gentry made a motion to recommend approval of PC-R-10-07 Rezoning of Victoria Land Holdings, LLC to the County Commissioners from “A & Con” Agriculture and Recreation & Conservancy zoning district to “C-2” Community Commercial zoning district with a PUD and a Use and Development Commitment.

Tony Curtis seconded and the motion carried with all members voting for the petition except Art Noffsinger who abstained.

Tony Curtis made a motion to amend the rules of procedure to allow the rezoning to go to the Commissioner’s meeting in two weeks instead of the following month.

Mike Moesner seconded and the motion carried with all members voting for the petition except Art Noffsinger who voted against the motion.

Phil Baxter made a motion to approve PP-10-09 upon the following conditions:

- Flood Plain and floodway of legal drain determination must be done before any development can occur on the out lot.
- A turnaround must be put in for emergency vehicles maneuverability.
- A certification on the bridge must be done showing it can support a fire truck and other emergency vehicles.
- Further review of Roslin Ln. (private street) and approval by the fire department after installation of the turnaround.
- A Hold Harmless executed between Victoria Land Holdings, LLC and Warrick County.
- The secondary plat must show access from the lots to Roslin Ln. (private street)
- No parking will be allowed on Roslin Ln. (private street)
- Signage for Roslin Ln. put up prior to recording the secondary plat.

Larry Willis seconded and the motion carried with all members voting for the petition except for Art Noffsinger who abstained.

Jordan Aigner asked if the Board would like to hear his idea on the exempt division category.

Mr. Gentry stated for him to go ahead.

Mr. Aigner stated his thoughts that there are 3 layers of development, the Major, Minor, and Exempt. He stated where the cost comes from is not the procedure of showing it to the Planning Commission, the cost comes from the requirements of the plat itself. He stated it costs to have a Surveyor do just the plat. He stated if the Board would allow under that exemption to describe it by metes and bounds but still have the Executive Director review it and in that metes and bounds description, which is done by a title company, Don Ashley could do it, and with that title is an exhibit that shows the layout and any improvements which would show that the improvements go with that deed. He continued that Mrs. Rector could approve that and it could be recorded just like a plat is recorded but they don't have to do all the Surveying so it is carved out by metes and bounds in an office with no field work done. He stated Mrs. Rector will review it just like a recorded plat so they see it, it is recorded, the Assessor knows where it is and the property owner saves the cost of a Surveyor.

Mrs. Rector stated he is talking about non-building sites.

Mr. Gentry stated he is talking about for example, that 3.5 acres Commissioner Mosbey wanted carved out.

Mrs. Rector stated but he is not talking about someone doing several lots.

Mr. Aigner stated no, again that would be Major / Minor.

Mr. Gentry stated Mr. Aigner didn't see what the ordinance changes were. He stated Letter B. said an unlimited number of lots as long as they were at least 10 acres. He stated there was no limit. He stated somebody could have 1000 acres and divide them into 10 acre lots and not have to be reviewed.

Mr. Aigner stated like Peabody.

Mr. Gentry stated exactly.

Commissioner Noffsinger stated that is crazy.

Mr. Aigner stated he agrees but for Commissioner Mosbey, he knows exactly what he is talking about or even when Attorney Welp brought up the heirs situation. He stated because a lot of people don't understand the difference between a minor subdivision and what they are proposing here and it is just the requirements of what is required from that plat. He stated it is not the minor subdivision requirement it is the vehicle it takes to get that recorded.

Mr. Gentry stated he doesn't really like those deeds that exclude out property.

Mr. Aigner stated as far as the deeds go, in the Assessors and Auditor's office it comes across their office as a deed anyway. He stated they've got an owner name and the exhibit shows the improvement

and Mrs. Rector automatically sees it so she'll know if the width etc. is wrong. He stated they read legal descriptions anyway whether it's a plat or a metes and bounds, they read it anyways.

Mrs. Rector stated it could actually even be something like that approved by the Site Review Committee.

Commissioner Noffsinger stated to come back for the meeting and explain that.

AMENDING ORDINANCES TO THE SUBDIVISION CONTROL ORDINANCE:

AN ORDINANCE TO AMEND ARTICLE II SECTION 2: TERMS DEFINED SUBSECTION 45(b) SUBDIVISION OF LAND AND SUBDIVIDE OF THE SUBDIVISION CONTROL ORDINANCE FOR WARRICK COUNTY, INDIANA

The purpose of this ordinance is to create an Exempt Division category. *Advertised in the Boonville Standard September 2, 2010. Continued from the September 13th and October 11th meetings.*

Guy Gentry made a motion to continue the amendment to the ordinance of Article II Section 2 45 (b).

Mike Moesner seconded and the motion carried.

AN ORDINANCE TO AMEND ARTICLE II SECTION 2: TERMS DEFINED SUBSECTION 45(a) SUBDIVISION OF LAND AND SUBDIVIDE OF THE SUBDIVISION CONTROL ORDINANCE FOR WARRICK COUNTY, INDIANA

The purpose of this ordinance is to allow division of property without including all parcels listed on one deed. *Advertised in the Boonville Standard September 2, 2010. Continued from the September 13th and October 11th meetings.*

Attorney Doll stated the question on the second ordinance is what constitutes a parcel of property when you are looking at it to be divided and the facts were that Peabody Coal Company had a thousand acres that they had acquired over many years by many separate deeds by many different owners and had collectively put it into a single chunk of ground. He stated then they came in and wanted to do a minor subdivision and carve it up into lots. He stated they had a difference of opinion on what was the parent parcel, if it was these 15 deeds over 75 years, if it created 15 different parcels even though it was now held by one owner or is the one parcel all 1000 acres. He stated the ordinance is silent, it does not define parcel. He stated no one else has asked about it but now they are. He stated there is a federal case out of the US District Court in Tennessee that says no, when they collectively add more land together it all goes into a single parcel that is owned by the same entity. He stated he is asking for direction in the ordinance what the definition of a parcel is. He stated this is what the developer wanted, this is language that says even if he owns a thousand acres he is still allowed to subdivide the property based on the original legal description by which he acquired it. He stated in that case he doesn't have 1 parcel with 1000 acres he has 15 parcels. He continued that their thought was that they ought to be able to do 15 minor subdivisions in one year on that collective piece of ground.

Mrs. Rector stated this was written by their attorney at Peabody Coal, she did not write this ordinance.

Attorney Doll stated he agrees that they need to define it.

Mr. Gentry stated his thoughts go back to the Assessor. He stated they are getting 15 tax statements, so it is 15 parcels.

Commissioner Noffsinger agreed. He stated if he buys his neighbor's property that is adjoining his property, that doesn't mean he has one property with two houses. He stated it means he has two separate pieces of property.

Mr. Gentry stated he would want to have it re-deeded as one property so he is only getting one tax statement.

Commissioner Noffsinger asked if they did that.

Mr. Gentry stated no.

Commissioner Noffsinger asked how one could say that they just arbitrarily melded it into one.

Attorney Doll stated it wasn't arbitrary; there wasn't anything in the ordinance to give either side guidance on the definition of a parcel. He stated the only court case says when one buys additional ground it becomes part of the one parcel.

Mrs. Rector stated what they used to do, the Attorney at the time thought if the deed stated "And" between descriptions, that all made it one parcel. She continued, but if it said "Also" between legal descriptions then it separated them. She stated she isn't sure how you distinguish between 'AND' and 'ALSO' but that is how she was taught. She stated for example "you ALSO own that" so that makes it separate. She stated she doesn't know if a person can go by that.

The President stated it all depends on your background; he's an ex-assessor, so for him it's all about tax statements.

Mr. Moesner stated he gets separate tax statements for all the different properties and they are all assessed as different entities.

Mr. Willis stated he's got 4 pieces of property that are all owned by the himself and are all contingent but he gets a tax statement for each one of them and when he rezoned them, he had to rezone each parcel.

Attorney Doll stated he doesn't have any problem with them being separate he just needs someone to tell him what this ordinance is meant to be. He stated maybe the better solution is to see how it is taxed and that a parcel is determined by the tax assessment and if it is a separate tax assessment it is a separate parcel.

Mrs. Rector stated what Peabody is wanting to do, they've got a 1000 acres parceled out into 15 acre, 20 acre 30 acre etc. parcels and they are going to chop them into 4 parcels each to meet the minor subdivision requirements and not have to go through a major subdivision. She stated that is what this

does. She stated maybe they should say, if they want to eliminate this from happening, if a person only owns 10 acres they can only do 3 new parcels per year because they've only got that on one deed. She stated the coal company has one deed that has 50 parcels on it and can do several different parcels.

Attorney Doll stated he doesn't think that is the question tonight. He stated he understands that Peabody is trying to avoid any road improvements to this site because with a minor sub they don't have to get road approval from the Commissioners. He stated they are going to have that happen, people 'gaming' the system. He stated but that is the second problem, this is the first problem and they need to define what a parcel is. Attorney Doll stated the Ordinance is, pardon him, stupid, because it doesn't say what a parcel is and he would really like to clarify what that is. He stated he is in favor of passing some amendment and recommending it to the Commissioners to be adopted as part of the ordinance defining what a parcel is. He stated it sounds to him like the Board wants it tied to the tax statement and he has no problem with that. He stated Mrs. Rector's point really needs to be a modification in the Minor Subdivision statute of whether or not they are going to allow this to be submitted with 15 different other minors all at one time for something. He stated that is another policy decision for another night.

Commissioner Noffsinger stated he is for tying it to a tax purpose.

Mr. Willis stated he agrees, tied to a tax statement.

Mike Moesner agreed.

Larry Willis made a motion that they amend the Ordinance to define a parcel, changing the wording in ARTICLE II SECTION 2: TERMS DEFINED SUBSECTION 45(a) SUBDIVISION OF LAND to: **parcels of land are those separately identified as tracts for property tax assessment** and strike the rest of the bold print.

Mike Moesner seconded and the motion carried.

The President asked if they should leave it at 2 and then amend it again at 3 if they change the other one.

Attorney Doll stated yes, they leave it at 2 tonight and amend it to 3 if the County does adopt the other ordinance. He stated he doesn't think they need any of the remaining bold language.

Commissioner Noffsinger stated that for the Commissioner's Meeting the vote has to be unanimous to change the rules of procedure otherwise it does not go through. He stated he is not sure that is required by this Board.

Mrs. Rector stated she doesn't think so, she thinks they can amend it with a majority.

Attorney Doll stated Robert's Rules would prescribe a simple majority

Mrs. Rector found the wording in the Rules of Procedure and stated it is on Page 9, 3.9. She stated that it would just require a simple majority.

OTHER BUSINESS:

Mrs. Rector stated in the Board's packets they will see a copy, procedures for special use applications and then on the second sheet they will see rules of procedure for the Board of Zoning Appeals.

Attorney Doll stated what they have is a requirement in the procedures and rules that says an application for a special use must be signed by the owner of the property and the owner. He stated what they have is a circumstance that follows. He stated Peabody Coal Company is a regulated special use of mining now under the ordinance that is new since 2005. He stated they have a parcel of property in the northern part of the County that may encompass as much as 8000 acres of ground that they intend to mine. He stated they have brought forth their first segment of it which has a little over a thousand acres in it that consists of many different tracts of property. He stated some of these tracts they own, some they own the coal, and some they just lease the coal. He stated they do not, according to their council, have the ability to present an application for a special use signed by the owner of all the land in the thousand acres and they have asked them to consider amending the procedures in the ordinance to allow them to serve notice. He stated perhaps not in every special use but in a large special use such as this, not to have them come in and sign the application or not to make the landowners hire a lawyer, which is the second option in our rules, or to give a power of attorney to someone which is a third option. He stated but to allow them to file the application as a lawful user of the site for a mining special use and to give a super notice to the land owner. He stated it would be a notice similar to the abutting land owners but it would have more description of the rights of a landowner to be present to be heard etc. He stated their contention is that there are circumstances where they may never be able to get an owners signature and as a consequence of that they are precluded from getting a special use and thence from mining some parcel of ground. He stated there are competing due process and equal protection arguments. He stated there is a right of the landowner to be involved, no doubt about, but there also ought to be a right for the coal company to be able to lawfully mine the coal they purchased under that ground at some point and time. He stated there are legitimate problems confronting each other. He stated the amendment of the ordinance and the amendment of the rule falls within the purview of the Board and the Commissioners. He stated he doesn't think this is appropriate for the guy who wants to build a garage to repair cars etc. He stated they talked about a trigger for example, if there are more than 'x' number of owners they may use alternative B where they have to give this super notice etc. He stated by the way the certified mailing deadline doesn't work anymore and the post office can no longer get certified mail back within ten days. He stated they hold it for 15 days.

Mrs. Rector stated yes and basically that is what they are looking at to amend. He stated the ordinance says ten days so they will have to change that and they should change it for everything. She stated the Board can see how many times she says – they don't have them, they're not back yet. She stated the post office holds the green cards for 15 days and then it's another 5 days before they get them back.

Mr. Willis stated if they get them back before 21 days they are lucky.

Attorney Doll stated one of these days they are going to get bit on this. He stated somebody is going to not like an approval that is given that the Board gives on the white receipt cards vs. the return receipts.

He stated it says in the ordinance they have to have return receipts. He stated and someone is going to say they acted without proper jurisdiction and this needs to be fixed.

Mrs. Rector stated right now they have to file the application, rezoning, special uses, variances, three weeks prior to the meeting. She stated not primary plats, they are different. She stated it has to be advertised 10 days before a meeting. She stated they could change the filing deadline to 4 weeks before the meeting, and then they've got an extra week to get their mail out and that gives them 21 days to get it back. She stated some people aren't going to like that but they should know because the filing deadlines are posted.

Attorney Doll stated it is not the inefficiency of the County; it is the post office that is the problem.

Mrs. Rector stated that must be some type of regulation because they called Boonville and Ohio Township and they were the same.

Mr. Willis stated on the green sheet it says they will make the delivery then try to redeliver within 10 days and then there's a third time where they try to deliver a week after that. He stated they try to deliver it 3 times before they send it back.

Attorney Doll asked if they can amend Section 5: Procedure to change 10 days to some bigger number.

Mr. Gentry stated 21 days.

Mrs. Rector stated yes 21 days prior.

Tony Curtis made a motion that they amend the Comprehensive Zoning Ordinance to Section 5: Procedure B. to read: After receipt of the application, the Board of Zoning Appeals shall conduct a public hearing pursuant to I.C. 36-7-4 for which **21 (twenty one)** days prior notice has been given by the applicant by certified mail, return receipt requested, to abutting property owners and **10 (ten) days notice** to the public by legal advertisement.

Attorney Doll asked if they want to change the posting of the notice. He stated he doesn't see why they have to change that unless they just want everything to be 21 days.

Mrs. Rector stated to just leave that one alone. She stated she wants to stick with the office advertising it in the paper ten days ahead of time. She asked if they want to look at the Planning Commission rules and regulations to amend also but this has to be an ordinance change.

Larry Willis seconded and the motion carried.

Attorney Doll stated as far as page 2 about the owner being present, maybe Mrs. Rector can advise the BZA what the APC's thoughts are.

Larry Willis stated if Peabody has 1000 parcels of ground, this room will not hold 1000 land owners first of all. He stated they would have to have a meeting someplace else and take attendance for every parcel. He stated they need to set some kind of number that will only take the large parcels with

multiple owners and give them the authority just to put them on notice that they are going to extract coal if they have the mineral rights to it.

Mr. Gentry stated he thinks they have to have that notification.

Attorney Doll stated absolutely. He stated they have to have due process.

Larry Willis stated they have to look at the land owner, the mineral rights owners, etc. He stated everyone has to be notified.

Mrs. Rector stated the staff is not going to sit there and verify that they have leases or mineral rights to all these properties, they will have to certify to it.

Attorney Doll stated they will have to put it in the application under penalties of perjury that they have in fact certified that these folks are the owners of the surface.

Mrs. Rector stated that is just putting too much on the Planning Commission and there could be hundreds of people.

Attorney Doll stated they are not going to accept that liability.

Mrs. Rector stated they will have to change the application.

Mr. Willis stated it is a real can of worms how to get everyone notified but also where they put the trigger mechanism so that someone out there with one or two property owners can't slip through and do the same thing that this application with 1000 property owners is receiving.

Attorney Doll stated they also talked about exempting them, revoking the special use for mining and there was staff support for that idea but he would represent that because the BZA had hesitation because that would only leave it controlled by the Department of Natural Resources in Indianapolis and they felt there wasn't enough local input to protect the general public so they were inclined not to recommend reviewing that. He stated while it isn't on the APC's plate to pass this, any advice they can give will be helpful because the Board of Zoning Appeals is a division of the Area Plan Commission by state statute.

Commissioner Noffsinger stated look what Peabody is getting ready to mine. He stated they know they are limited in Warrick County of what they are going to be able to mine and they are going after it all right now.

Mrs. Rector stated she thinks it's like 8000 acres in total.

Commissioner Noffsinger stated yes, what they are trying to do is lock it all up, get it all done, because once this is done they are going to be done. He stated they realize that, there are like 5 mines that they are trying to get everybody, even Alcoa, because it will be coming to an end. He stated they are having disputes, as a Commissioner they hear the land disputes they are having and it is his opinion they are trying to find a way of getting around some of these land disputes by doing what they are

talking about here. He stated they saw it with Interchange Mine; they couldn't get everybody to the table because there were legal issues. He stated people didn't want to deal with them.

Attorney Doll stated and they obviously advise everybody that they can't solve individual problems between them and the mines. He stated the Planning Commission's job is to follow the ordinance and if it meets the ordinance then give it the special use or deny the special use. He stated property owners have all the remedies available to them in the courts if they choose to do so. He stated if they want to get an injunction or whatever else they can although it's probably not practical that they can get an injunction.

Commissioner Noffsinger stated but under the way it is written right now, this forces Peabody to address those issues if they are going to get everybody to the table.

Attorney Doll stated he doesn't represent Peabody he has no conflict of interest, he represents no farmer that has an interest in that area or land owner. He stated Peabody's representation is that there could be some parcels with a hundred land owners for example, a man and his wife own the ground and they lease to Peabody, and they retain the royalties. He continued in their Will they leave it to their 8 kids and over decade after decade, that 8 kids becomes 64, 102 etc. and literally they have to have all of those signatures on an application, now he thinks a court would find that ordinance to be arbitrary and capricious. He stated there is no justification as long as they are giving them notice and let the owners appear to preserve their rights if they choose to do so but they can't compel someone to sign an application if they say no. He stated generally they can't force a human being to sign a document that he or she is not inclined to sign. He stated now the question is that the ordinance has created this road block. He asked if they fix it or not and if they fix it, is a super notification to the land owners sufficient. He stated more than just an abutting land owner's type of notification but one that goes on to say they have certain legal rights, a right to due process, a right to be heard as a land owner etc. He stated that is the question if it meets with the satisfaction of the County or not. He stated and ultimately it is coming back to the Commissioners. He stated this is a rule, he thinks there is a provision in the ordinance that says the application must be signed by the owner. He stated this says the owner has to be present, but he thinks there is a rule in the ordinance that says the application must be signed by the owner.

Mr. Gentry stated it is hard to find a catch all rule. He stated he owns 1/27th right of oil in a 60 acre tract. He asked if he should be able to stop Texas Gas. He stated he doesn't think so but he wants his 1/27th if they hit it. He asked if they should make them get 27 signatures.

Mr. Willis stated or make the owners go to a meeting because their rules say they have to be there if they are the owner.

Commissioner Noffsinger stated or have representation and those 27 people can have 1 attorney show up.

Mr. Willis stated they could but he doubts it would happen.

Attorney Doll stated they don't want to pay the Attorney to show up.

Mrs. Rector asked Mr. Gentry, if he has 27 people owning this with him, how they know who to notify.

Attorney Doll stated they have, like in oil wells, a certified history of the title ownership of the property and that is the basis for the payment of the royalties etc. and that would be the basis for who would have to sign the application.

Mr. Gentry stated his Grandmother had a third, then her children inherited a ninth, then his mom and dad passed away and he has a 27th. He stated there are still just 3 of them and where the rest of it goes he doesn't know.

Mrs. Rector stated how a mine even knows who to send a notice to.

Mr. Moesner stated the thing that he doesn't understand, if someone signs a lease to a coal company for the right to mine, they have the control to do that. He stated he doesn't understand, if someone signs that, and they receive payment for that, how they have a say in the mining of it.

Attorney Doll stated the ordinance requires it to be the participation of the owner of the property and they don't own the property, they own the mineral rights, or a lease. He stated his advice is if Peabody Coal bought the coal, took a coal deed, they can sign the application.

Mike Moesner stated he agrees.

Attorney Doll stated if they own the surface and the coal he thinks they can sign the application but if they have only leased the coal he doesn't think they can sign the application because they are not the owners of the land. He stated he is not trying to nitpick but that is really what the ordinance says.

Mr. Willis stated and if they go into extract it, they are going to extract his half of the coal that is in there too, not just half.

Attorney Doll asked if the applications for special use have to be signed by the owner.

Mrs. Rector stated all of their applications have to be signed by the owner.

Attorney Doll stated the statute does not say it has to be signed by the owner. He stated under Section 5 Special Use Article 5 it simply says a person desiring a special use classification must submit an application to the Board of Zoning Appeals at the Area Plan Commission office. He stated it doesn't say it has to be signed by the owner so they may not have to amend the ordinance but right now the practice is the application has to be signed by the owner. He stated but the rules say the hearing is only held if the owner appears or is represented by an Attorney or Power of Attorney.

Mrs. Rector stated and rezoning applications etc. all say signed by owner.

Attorney Doll stated rezoning he gets, special use he is not sure he gets.

ATTORNEY BUSINESS:

Attorney Doll stated none.

EXECUTIVE DIRECTOR BUSINESS:

Mrs. Rector stated none.

Being no other business Larry Willis made a motion to adjourn.

Commissioner Noffsinger seconded and the meeting adjourned at 7:54 pm.

Mrs. Rector requested they reconvene the meeting so they can discuss changing their meeting dates from December 13th to December 6th because of the Commissioner's changing their meeting dates.

Tony Curtis made a motion to change the December meeting to the 6th.

Larry Willis seconded and the motion carried.

Being no other business the meeting adjourned at 7:55pm.

Guy Gentry, President

ATTEST: The undersigned Secretary of the Warrick County Area Planning Commission does hereby certify the above and foregoing is a full and complete record of the Minutes of said Board at their monthly meeting held November 8, 2010.

Sherri Rector, Executive Director